

LAW OFFICES

FARRAR & BATES, L.L.P.

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Molly R. Cripps
Mary Byrd Ferrara*
Robyn Beale Williams
Jennifer Orr Locklin
Keith F. Blue
Christopher J. Larkin**

211 Seventh Avenue North
Suite 420
Nashville, Tennessee 37219

Telephone 615-254-3060
Facsimile 615-254-9835
E-Mail fblaw@farrar-bates.com

RECEIVED

Of Counsel

H. LaDon Baltimore

2005 APR 29 PM 1:13

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April 29, 2005

Director Deborah T. Tate
ATTN: Sharla Dillon, Dockets
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-5015

Via Hand Delivery

Re: Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting From Changes of Law; Docket No 04-00381

Dear Director Tate.

Enclosed for filing are 14 copies of a letter and proposed TRRO/TRO Interim Amendment to Interconnection Agreement sent to BellSouth Telecommunications, Inc. by my client, XO Communications, Inc.

Sincerely,



H. LaDon Baltimore
don.baltimore@farrar-bates.com
Counsel for XO Communications Services, Inc

LDB/dcg
Enclosures

Certificate of Service

The undersigned hereby certifies that a true and correct copy of the foregoing has been forwarded via U. S. Mail, first class postage prepaid, overnight delivery, electronic transmission, or facsimile transmission to the following, this 29th day of April, 2005.

☐ Hand
☐ Facsimile
☐ Overnight
☒ Electronic

Guy Hicks, Esq
BellSouth Telecommunications, Inc
333 Commerce Street, Suite 2101
Nashville, TN 37201

Director Deborah T. Tate
April 19, 2005
Page 2

☐ Hand
☐ Facsimile
☐ Overnight
☒ Electronic

w/copy to
Carolyn.Hanesworth@bellsouth.com

James L. Murphy III, Esq.
Boult, Cummings, et al.
1600 Division Street, Suite 700
P. O. Box 340025
Nashville, TN 37203
jmurphy@boultcummings.com

☐ Hand
☐ Facsimile
☐ Overnight
☒ Electronic

Henry Walker, Esq.
Boult, Cummings, et al.
1600 Division Street, Suite 700
P. O. Box 340025
Nashville, TN 37203
hwalker@boultcummings.com

☐ Hand
☐ Facsimile
☐ Overnight
☒ Electronic

Edward Phillips, Esq.
Sprint
NCWKFR0313
14111 Capital Blvd
Wake Forest, NC 27587
Edward.phillips@mail.sprint.com

☐ Hand
☐ Facsimile
☐ Overnight
☒ Electronic

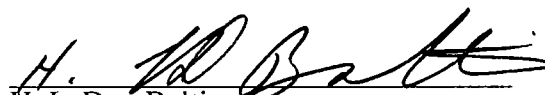
Charles B. Welch, Esq.
Farris, Mathews, et al.
618 Church Street, Suite 300
Nashville, TN 37219
cwelch@farrismathews.com

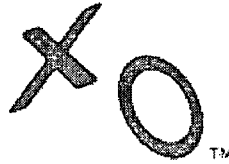
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☒ Electronic

John J. Heitmann, Esq.
Kelley Drye & Warren LLP
1200 19th Street, N.W., Fifth Floor
Washington, D.C. 20036
jheitmann@kelleydrye.com

☐ Hand
☐ Facsimile
☐ Overnight
☒ Electronic

Dana Shaffer, Esq.
Vice President, Regulatory Counsel,
XO Communications Services, Inc.
105 Malloy Street, Suite 300
Nashville, TN 37201-2315
dshaffer@xo.com


H. LaDon Baltimore



April 28, 2005

Guy Hicks
BellSouth Telecommunications, Inc.
Via Electronic Mail

Dear Guy:

I am perplexed by your response to my email requesting an interim amendment proposal that conforms to what the TRA has advised the parties to negotiate within thirty days. Perhaps your negotiations folks have not kept you up to date on what XO has been working on with them.

When I said that I would not consider a wholesale renegotiation of Attachment 2, I meant in the context of these thirty day negotiations regarding "no new adds." Surely you are aware that XO has redlined BellSouth's proposed Attachment 2, and I am personally involved in negotiations with members of your regulatory team regarding a full TRO/TRRO amendment. However, for purposes of the negotiation of an interim agreement regarding "no new adds," the TRA was clear -- that the parties needed to work something out with regard to "no new adds," and that whatever BellSouth proposed on that specific issue should also acknowledge/implement BellSouth's obligations regarding commingling and conversions.

While BellSouth had no problem asking that it be allowed to implement "no new adds" without regard to any other TRO or TRRO provision, now that the TRA has indicated that, at a minimum, any interim agreement regarding "no new adds" should also address commingling and conversions, BellSouth has changed its tune, and wants nothing short of a full change of law amendment. Further, BellSouth is ignoring the TRA Directors' admonition that the parties attempt to work out this issue, indicating that, instead, it is "only a matter of time" before BellSouth stops taking new orders.

I am only attempting, in good faith, to work out these interim issues as instructed by the TRA. Attached is a proposal that is narrowly tailored to address these interim issues; please provide a response to this proposal as soon as possible.

XO will continue to work with BellSouth on negotiation of full resolution of all outstanding interconnection agreement issues; in fact, I have another negotiation call with your folks this morning. In order to resolve the "no new adds" issue, however, and move

forward with the generic docket, it is imperative that the Parties act in good faith to, as more than one Director has put it, "work these things out." My attached proposal does just that, and comports with BellSouth's position regarding the elimination of "new add" orders.

I trust that you didn't mean to mislead anyone with your response to my email of April 19, 2005, but that you simply were not aware of XO's ongoing negotiations with your regulatory team. A full resolution of TRO and TRRO issues has been XO's desire all along, and I have spent countless hours working on review and negotiation of BellSouth language proposals. "Exactly when does XO intend to negotiate the changes required by these orders," you ask? XO sent the very first request to negotiate these changes even before the TRO was published, and has been in excruciatingly detailed negotiations with BellSouth ever since.

The point of the generic docket is to help move the parties forward in the resolution of all TRO and TRRO issues. In the interest of good faith negotiations, however, and in response to the TRA's directive regarding resolutions of the "no new adds" issue, XO submits the attached interim agreement eliminating new adds, and requiring, at a minimum, commingling and conversions. If BellSouth want to add entrance facilities or another discreet issue to this interim agreement, XO will be glad to consider it

The time is now to stop this back and forth rhetoric and dig into resolving these issues. The attached proposal is a solid first step; please respond to it as soon as possible.

Copies of this letter and attachment are being provided to the TRA and to counsel of record, via electronic mail.

Yours truly,

/electronically signed/

Dana Shafer
Vice President, Regulatory Counsel

Attachment

Cc: Hon Deborah Taylor Tate, Director, as hearing officer, via email
Tennessee Regulatory Authority, via filing
Counsel of Record

TRRO/TRO Interim Amendment

to the

INTERCONNECTION AGREEMENT

between

BellSouth Telecommunications, Inc.

and

CLEC

This Amendment No [NUMBER] (the "Amendment") is made by and between BellSouth Telecommunications, Inc., a Georgia corporation with offices at [ADDRESS] and CLEC, a corporation with offices at [ADDRESS] ("CLEC"), and shall become effective on (the "Amendment Effective Date") BELL SOUTH and CLEC are hereinafter referred to collectively as the "Parties" and individually as a "Party". This Amendment covers services in BELL SOUTH's service territory in the State of Tennessee (the "State")

WITNESSETH

WHEREAS, BELL SOUTH and CLEC are Parties to an Interconnection Agreement under Sections 251 and 252 of the Telecommunications Act of 1996 dated [DATE] (the "Agreement"), and

WHEREAS, the Federal Communications Commission (the "FCC") released an order on August 21, 2003 in CC Docket Nos 01-338, 96-98, and 98-147 (the "Triennial Review Order" or "TRO"), which became effective as of October 2, 2003, and

WHEREAS, the FCC released an order on February 4, 2005, in WC Docket No 04-313 and CC Docket No 01-338 (the "Triennial Review Remand Order" or "TRRO"), which became/becomes effective as of March 11, 2005, which Order addresses issues raised in *USTA II*, and

WHEREAS, pursuant to Section 252(a)(1) of the Act, the Parties wish to amend the Agreement in order to give contractual effect to the provisions of the TRO and TRRO, as set forth herein, and

NOW, THEREFORE, in consideration of the promises and mutual agreements set forth herein, the Parties agree to amend the Agreement as follows

- 1 Scope of Amendment The Parties agree that the Agreement should be amended by the addition of the terms and conditions set forth herein, in the TRO/TRRO Interim Attachment and any exhibits thereto ("collectively referred to as "Amendment") The TRO/TRRO Interim Attachment (including any Exhibits thereto) is hereby incorporated by reference into this Amendment. Amendment shall apply notwithstanding any other provision of a BELL SOUTH tariff unless CLEC, at CLEC's option, orders from a BELL SOUTH tariff. As used herein, the Agreement, as revised and supplemented by this Amendment, shall be referred to as the "Amended Agreement." Any capitalized terms used herein, not otherwise separately defined, shall have the meanings as set forth in the Agreement.
- 2 Conflict between this Amendment and the Agreement This Amendment shall be deemed to revise the terms and provisions of the Agreement only to the extent necessary.

to give effect to the terms and provisions of this Amendment. In the event of a conflict between the terms and provisions of this Amendment and the terms and provisions of the Agreement, this Amendment shall govern, provided, however, that the fact that a term or provision appears in this Amendment but not in the Agreement, or in the Agreement but not in this Amendment, shall not be interpreted as, or deemed grounds for finding, a conflict for purposes of this Section 2.

- 3 Counterparts This Amendment may be executed in one or more counterparts, each of which when so executed and delivered shall be an original and all of which together shall constitute one and the same instrument.
- 4 Captions The Parties acknowledge that the captions in this Amendment have been inserted solely for convenience of reference and in no way define or limit the scope or substance of any term or provision of this Amendment.
- 5 Rights of Parties Notwithstanding any contrary provision in the Agreement, this Amendment, or in any BELLSOUTH tariff, nothing contained in the Agreement, this Amendment, or any BELLSOUTH tariff shall limit the Parties' rights to appeal, seek reconsideration of or otherwise seek to have stayed, modified, reversed or invalidated any order, rule, regulation, decision, ordinance or statute issued by the Commission, the FCC, any court or any other governmental authority related to, concerning, or that may affect either Parties' obligations or rights under the Agreement, this Amendment, any BELLSOUTH tariff or Applicable Law, as defined herein.
- 6 State Generic Proceedings Nothing contained in this Amendment is intended to waive either Party's right to incorporate the [STATE] Commission's decisions resulting from its TRO, 271, State law or other proceedings. Any such decisions that materially affect any material terms of the Amended Agreement shall be considered a change in law and shall be subject to any change in law provisions of the Amended Agreement, if any.

SIGNATURE PAGE

IN WITNESS WHEREOF, the Parties hereto have caused this Amendment to be executed as of the Amendment Effective Date

[CLEC]

BELLSOUTH Telecommunications, Inc.

By _____

By _____

Printed _____

Printed _____

Title _____

Title _____

R

F

TRO/TRRO Interim Attachment

1. General Conditions

- 1 1 Notwithstanding any other provision of the Agreement, this Amendment, the Amended Agreement, or any BELLSOUTH tariff, and subject to the change of law provisions of this Amended Agreement and all other relevant provisions of this Amended Agreement, BELLSOUTH shall be obligated to provide access to unbundled Network Elements ("UNEs"), Combinations (as defined below), or UNEs Commingled (as defined below) with wholesale services, to CLEC under the terms of this Amended Agreement unless precluded by 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law (as defined herein) as it exists at the time this Amendment is entered into. Nothing in this Amendment shall reduce the period of notice that BELLSOUTH must provide under the Agreement to discontinue the provisioning of a network element as a UNE.
- 1 2 BELLSOUTH reserves the right to argue in any proceeding before the Commission, the FCC or another governmental body of competent jurisdiction that an item identified in the Agreement or this Amendment as a Network Element (a) is not a Network Element under 47 U.S.C. § 251(c)(3) or other Applicable Law, (b) is not a Network Element BELLSOUTH is required by 47 U.S.C. § 251(c)(3) or other Applicable Law to provide to CLEC, or (c) is an item that BELLSOUTH is not required to offer to CLEC at the rates set forth in the Amended Agreement, provided, however, that BELLSOUTH comply with all requirements for access to Network Elements to the fullest extent required by the Agreement, this Amendment, and/or Applicable Law, including but not limited to change of law provisions, while BELLSOUTH asserts any such rights. CLEC reserves the right to argue in any proceeding before the Commission, the FCC or another governmental body of competent jurisdiction that an item, whether or not identified in the Agreement, this Amendment, or any BELLSOUTH tariff (a) is a Network Element under 47 U.S.C. Sec 251(c)(3) or other Applicable Law, (b) is a Network Element BELLSOUTH is required to provide by 47 U.S.C. Sec 251(c)(3) or other Applicable Law to CLEC, or (c) is an item that BELLSOUTH is required to offer to CLEC at the rates set forth in the Amended Agreement.

2. Definitions

Notwithstanding any other provision in the Agreement or any BELLSOUTH tariff, the following terms, as used in the Amended Agreement, shall have the meanings set forth below:

2 1 Applicable Law

"Applicable Law" means all laws, statutes, common law, regulations, ordinances, codes, rules, guidelines, orders, **and** permits, including those relating to the environment or health and safety, of any Governmental Authority that apply to the Parties or the subject matter of the Agreement or this Amendment.

"Governmental Authority" means any federal, state, local, foreign, or international court, government, department, commission, board, bureau, agency, official, or other regulatory, administrative, legislative, or judicial authority with jurisdiction over the subject matter at issue.

2 2 Circuit Switch

A device that performs, or has the capability of performing switching via circuit technology. The features, functions, and capabilities of the switch include the basic

switching function of connecting lines to lines, lines to trunks, trunks to lines, and trunks to trunks

2 3 Combination

The provision of unbundled Network Elements in combination with each other, including, but not limited to, the Loop and Switching Combinations and Shared Transport Combination (also known as Network Element Platform or UNE-P) and the Combination of Loops and Dedicated Transport (also known as an EEL)

2 4 Commingling

The connecting, attaching or otherwise linking of a Network Element, or a Combination of Network Elements, to one or more facilities or services that CLEC has obtained at wholesale from BELLSOUTH pursuant to any other method other than unbundling under Section 251(c)(3) of the Act, or the combining of a Network Element, or a Combination of Network Elements, with one or more such facilities or services "Commingling" means the act of Commingling

2 5 Declassified Network Elements

Any facility that BELLSOUTH was obligated to provide to CLEC on an unbundled basis pursuant to the Agreement or a BELLSOUTH tariff, but which, except as otherwise provided below, BELLSOUTH is no longer obligated to provide on an unbundled basis under 47 U S C § 251(c)(3) and 47 C F R Part 51 pursuant to the TRO or TRRO. The Declassified Network Elements as contemplated under this Section do not impact any separate obligations of BELLSOUTH to provide such Network Elements under other applicable state or federal law, including 47 U S C § 271.

2 6 Dedicated Transport

A transmission facility between BELLSOUTH switches or wire centers, (including BELLSOUTH switching equipment located at CLEC's premises), within a LATA, that is dedicated to a particular end user or carrier and that is provided on an unbundled basis pursuant to 47 U S C § 251(c)(3), 47 C F R Part 51 or other Applicable Law

2 7 DS1 Dedicated Transport

Dedicated Transport having a total digital signal rate of 1 544 Mbps

2 8 DS3 Dedicated Transport

Dedicated Transport having a total digital signal rate of 44 736 Mbps

2 9 DS1 Loop

A digital transmission channel suitable for the transport of 1 544 Mbps digital signals that is provided on an unbundled basis pursuant to 47 U S C § 251(c)(3), 47 C F R Part 51 or other Applicable Law. A DS1 Loop includes the electronics necessary to provide the DS1 transmission rate

2 10 DS3 Loop

A digital transmission channel suitable for the transport of 44 736 Mbps (the equivalent of 28 DS1 channels) digital signals that is provided on an unbundled basis pursuant to 47

U S C § 251(c)(3), 47 C F R Part 51 or other Applicable Law A DS3 Loop includes the electronics necessary to provide the DS3 transmission rate

2 11 Enterprise Switching

Local Switching or Tandem Switching that, if provided to CLEC, would be used for the purpose of serving CLEC's customers using DS1 or above capacity Loops

2 12 Local Circuit Switching

Local Circuit Switching is a function provided by a Circuit Switch or Packet Switch and encompasses all line-side and trunk-side facilities, plus the features, functions, and capabilities of the switch. Local circuit switching includes all vertical features that the switch is capable of providing, including customer calling, custom local area signaling services features, and Centrex, as well as any technically feasible customized routing functions. Specifically, this includes the line-side and trunk-side facilities associated with the line-side port on a circuit switch in BELLSOUTH's network, plus the features, functions, and capabilities of that switch, unbundled from loops and transmission facilities, including, but not limited to, (a) the line-side Port (including but not limited to the capability to connect a Loop termination and a switch line card, telephone number assignment, dial tone, one primary directory listing, pre-subscription, and access to 911), (b) line and line group features (including but not limited to all vertical features and line blocking options that the switch and its associated deployed switch software are capable of providing that are provided to BELLSOUTH's local exchange service Customers served by that switch), (c) usage (including but not limited to the connection of lines to lines, lines to trunks, trunks to lines, and trunks to trunks), and (d) trunk features (including but not limited to the connection between the trunk termination and a trunk card)

2 13 Mass Market Switching

Local Switching or Tandem Switching that if provided to CLEC, would be used for the purpose of serving CLEC's end user customers over DS0 Loops

2 14 Packet Switch

A network device that performs switching functions primarily via packet technologies. Such a device may also provide other network functions (e g , Circuit Switching)

2 15 Packet Switching

The routing or forwarding of packets, frames, cells, or other data units based on address or other routing information contained in the packets, frames, cells or other data units, or the functions that are performed by the digital subscriber line access multiplexers, including but not limited to the ability to terminate an end-user customer's copper Loop (which includes both a low-band voice channel and a high-band data channel, or solely a data channel), the ability to forward the voice channels, if present, to a circuit switch or multiple circuit switches, the ability to extract data units from the data channels on the Loops, and the ability to combine data units from multiple Loops onto one or more trunks connecting to a packet switch or packet switches

2 16 Routine Network Modifications

Routine Network Modifications are those prospective or reactive activities that BELLSOUTH is required to perform for CLEC and that are of the type that BELLSOUTH

regularly undertakes when establishing or maintaining network connectivity for its own retail customers. Routine network modifications include, but are not limited to, rearranging or splicing of cable, adding an equipment case, adding a doubler or repeater, adding a smart jack, installing a repeater shelf, adding a line card, deploying a new multiplexer or reconfiguring an existing multiplexer, and attaching electronic and other equipment that the incumbent LEC ordinarily attaches to a DS1 loop to activate such loop for its own customer. They also include activities needed to enable a requesting finish her

2 17 UNE-P

UNE-P consists of a leased combination of the loop, local switching, and shared transport UNES

3. **Unbundled Network Elements**

3 1 Except as may be limited by the TRO and TRRO, BELLSOUTH shall provide to CLEC access to Mass Market Local Circuit Switching, associated shared transport, DS1, DS3, and Dark Fiber Loops, and DS1, DS3, and Dark Fiber Dedicated Transport, and all other generally applicable Network Elements on the terms and conditions as set forth in the Agreement, as Amended hereto. This obligation applies to both existing and new Network Elements (Network Elements ordered after the Effective Date of this Amendment) and applies to access to such Network Elements either singly or in any combination thereof, including EELs and UNE-P, as applicable. Other than those modifications to the Agreement as expressly set forth in this Amendment, and any other applicable amendment to the Agreement, which the Parties expressly agree and acknowledge fully represent all rule changes necessitated by the TRO and TRRO, BELLSOUTH shall not make any unilateral changes to (including any discontinuances of) its offering of Network Elements, or other terms governed by the Amended Agreement.

3 1 1 The terms, conditions, and rates relating to access to Network Elements (other than those elements addressed in this Amendment) are unaffected by the terms of the TRO and TRRO or this Amendment.

3 1 2 Subject to the provisions set forth in herein regarding change in law, the obligations set forth in Section 3 1 above shall remain in place for the term of the Amended Agreement, except to the extent that the obligations, in whole or in part, have been superceded by either a voluntarily negotiated agreement between CLEC and BELLSOUTH, an intervening FCC Order affecting specific unbundling obligations implemented pursuant to the change in law section of the Parties' Interconnection Agreement, of the Amended Agreement, or (with respect to rates only) a Commission order raising or reducing rates for the above listed Network Elements.

3 2 Unbundled Local Switching

3 2 1 Unbundled Local Circuit Switching BELLSOUTH shall continue to provide CLEC with non-discriminatory access to Local Circuit Switching, including Tandem Switching, and all Signaling and Call-Related Databases associated with such Local Circuit and Tandem switching, on an unbundled basis, in accordance with Applicable Law.

3 2 2 Interim Period – No new adds

3 2 2 1 Unless, during the Transition Period, the FCC establishes different transition rules and/or time frames in a reconsideration order, or otherwise, for the period running 12 months from the effective date of the TRRO, BELLSOUTH shall provide Mass Market Local Circuit Switching on an unbundled basis on the terms and conditions set forth in the Agreement without alteration for all CLEC customers as of the effective date of the TRRO, provided, however, pricing for such unbundled Mass Market Local Circuit Switching shall be as set forth in Section 3 2 2 2 below. Subject to the pricing provisions referenced immediately above, the Parties expressly acknowledge that during the Transition Period, CLEC may continue to order unbundled Mass Market Local Switching for servicing all end-user customers of CLEC who were customers as of the effective date of the TRRO, without limitation under the same terms and conditions set forth in the Agreement. With regard to new CLEC customers added after the effective date of the TRRO ("new adds,"), BELLSOUTH shall provide Mass Market Local Circuit Switching on an unbundled basis at the rates and on the terms and conditions, if any, ordered by applicable Commission or pursuant to commercial agreement between the parties ("interim switching rate"), during the pendency of such matter before the Tennessee Regulatory Authority ("TRA") and/or the FCC, however, the interim switching rate for such "new adds" shall not exceed the rate established by the TRA in Docket no. _____ (DeltaCom Arbitration). The Parties disagree as to the establishment of a final rate under Section 271 of the Act or otherwise, each party, therefore, reserves its right to assert the right to true-up of the interim switching rate to an appropriate final rate established by the applicable Commission.

3 2 2 2 Transition Period Pricing. Absent any Commission or FCC ruling that access to such Network Elements must be made available pursuant to applicable federal or state law at rates different than those set forth in this subsection, BELLSOUTH may charge, on a prospective basis only, up to the following rates for CLEC's customer base existing as of the effective date of the TRRO:

(a) BELLSOUTH's rates for mass market local switching Network Elements when provided in combination with shared transport and loops (UNE-P) shall not exceed the greater of

- (i) The TELRIC rate at which CLEC leased that combination of elements on June 15, 2004, plus one dollar, or
- (ii) The TELRIC rate the Commission established, if any, between June 16, 2004, and the effective date of the TRRO, plus one dollar.

3 2 2 3 Where the Transition Period takes effect and the rates set forth in Section 3 2 2 2 apply, the terms and conditions of access to these Network Elements shall remain unchanged and shall be provided consistent with the Agreement, as revised by this Amendment.

3 2 2 4 Absent a Commission ruling that access to Mass Market Switching must be provided to new customers pursuant to applicable federal or state law at specific regulated rates, terms and conditions, the rates,

terms and conditions of access for new customers are not subject to the rate caps set forth in Section 3 2 2 2. For purposes of this section, new customers are customers that CLEC acquires on or after either the beginning of the Transition Period, or the Amendment Effective Date, whichever is later. New customers do not include CLEC's existing customers at additional locations, or existing customers for which CLEC is providing additional or expanded services or facilities on or after the effective date of this Amendment, or for customers whose connectivity is changed (e.g. technology migration, hot cut, loop reconfiguration, UNE-P to UNE-L etc) on or after the effective date of this Amendment. CLEC will provide BELLSOUTH with the information necessary to identify new customers and BELLSOUTH shall apply its rate for new customers only to those orders identified by CLEC as orders relating to new customers. During the pendency of the issue of access for new customers before the TRA, BellSouth shall provide such access at the interim rate set forth above. The Parties disagree as to the establishment of a final rate under Section 271 of the Act or otherwise, each party, therefore, reserves its right to assert the right to true-up of the interim rate to an appropriate final rate established by the applicable Commission.

3 2 2 5 Upon expiration of the Transition Period and in the absence of a Commission ruling requiring BELLSOUTH to provide access to Mass Market Switching, including UNE-P, as a Network Element under applicable federal or state law, CLEC will submit orders to BELLSOUTH either to disconnect the Mass Market Switching CLEC is purchasing at that time or to convert that Mass Market Switching to another BELLSOUTH service. BELLSOUTH shall not impose any termination charges associated with the conversion or any discontinuance of Mass Market Switching and any conversion of Mass Market Switching shall take place in a seamless manner without any customer disruptions or adverse affects to service quality. When a conversion of Mass Market Switching is to an analogous access service or alternative service arrangement, BELLSOUTH shall perform such conversion on a single order and shall not assess any non-recurring charges for such conversion even if managed as a project.

3 2 2 6 High Capacity Loops and Transport Upon receipt of an order from CLEC (such order shall constitute self-certification of eligibility in the requested wire center by such ordering CLEC), BELLSOUTH shall provide CLEC with nondiscriminatory access to high capacity Loops and/or Transport on an unbundled basis under the terms and conditions of the Parties' Agreement, provided, however, that BellSouth may, upon good faith belief that such self-certification by CLEC is inaccurate, initiate a dispute of any such self certification of eligibility to the appropriate Commission in accordance with the Dispute Resolution provisions of the Parties' Agreement and pursuant to the criteria set forth in the TRRO. The existence of such dispute shall not entitle BellSouth to delay or fail to provision the requested loop and/or transport.

3 2 2 7 Transition Period for Declassified High Capacity Loops and Transport

3 2 2 8 Unless, during the Transition Period, the FCC or TRA establishes different transition rules and/or time frames in a reconsideration order, or otherwise, for the period running 12 months from the effective date

of the TRRO, BELLSOUTH shall provide access to declassified high capacity loops and/or transport on an unbundled basis on the terms and conditions set forth in the Agreement without alteration for all CLEC customers as of the effective date of the TRRO, provided, however, pricing for such declassified high capacity loops and transport shall be as set forth in this Section. With regard to new CLEC customers added after the effective date of the TRRO ("new adds,") BELLSOUTH shall provide declassified high capacity loops and transport on an unbundled basis at the rates and on the terms and conditions, if any, ordered by applicable Commission or as set forth in applicable tariffs or in agreement between the parties ("interim rate"). The Parties disagree as to the establishment of a final rate under Section 271 of the Act or otherwise, each party, therefore, reserves its right to seek a true-up of the interim rate to an appropriate final rate established by the applicable Commission.

Subject to these pricing provisions, the Parties expressly acknowledge that during the Transition Period, CLEC may continue to order additional declassified high capacity loops and transport servicing all end-user customers of CLEC who were customers as of the effective date of the TRRO without limitation under the same terms and conditions set forth in the Agreement.

(a) Transition Period Pricing. Absent any Commission ruling that access to declassified high capacity loops and transport must be made available pursuant to Applicable Law at rates different than those set forth in immediately below, BELLSOUTH may charge, on a prospective basis only, up to the following rates for CLEC's customer base existing as of the effective date of the TRRO:

(i) For declassified high capacity loops and transport, BELLSOUTH's rates shall not exceed the greater of

- (1) 115% of the TELRIC rate CLEC effectively paid for that element on June 15, 2004, or
- (2) 115% of the TELRIC rate the Commission establishes, if any, between June 16, 2004 and the effective date of the TRRO.

(b) BELLSOUTH shall continue to provide high capacity loops and transport on an unbundled basis to wire centers, where such wire centers meet the service eligibility requirements set forth above, at the TELRIC rates, terms, and conditions set forth in this Agreement, including those wire centers for which CLEC has self-certified eligibility, subject to dispute after provisioning as set forth above. Upon expiration of the Transition Period and in the absence of a Commission ruling requiring BELLSOUTH to provide access to declassified high capacity loops and/or transport as Network Elements under Applicable Law, CLEC will submit orders to BELLSOUTH either to disconnect the declassified high capacity loops and transport CLEC is purchasing at that time or to convert said loops and/or transport to another BELLSOUTH service. BELLSOUTH shall not impose any termination charges associated with the conversion or any discontinuance of declassified high capacity loops or transport.

and any conversion of those high capacity loops or transport shall take place in a seamless manner without any customer disruptions or adverse effects to service quality. When a conversion of declassified loop or transport is to an analogous access service or alternative service arrangement, BELLSOUTH shall perform such conversion on a single order, and shall not assess any non-recurring charges for such conversion.

3.2.2.9 Section 251(c)(2) Interconnection Facilities Interconnection facilities and equipment provided pursuant to 47 U.S.C. Section 251(c)(2) ("Interconnection Facilities") are not unbundled Network Elements provided pursuant to 47 U.S.C. Section 251(c)(3) and nothing in this Amendment is intended to impair or limit in any way CLEC's rights to obtain access to 251(c)(2) Interconnection Facilities. Interconnection Facilities include, but are not limited to, transport facilities and equipment between the CLEC switch and the BELLSOUTH Tandem Switch, or other Point of Interconnection designated by CLEC, used for the exchange of traffic between CLEC and BELLSOUTH. Interconnection Facilities are to be provided by BELLSOUTH to CLEC at rates consistent with the TELRIC pricing principles established by the FCC and the Commission.

3.3 Commingling, Conversions, and Combinations

3.3.1 Commingling and Conversions Notwithstanding any other provision of the Agreement or any BELLSOUTH tariff, and subject to the conditions set forth herein, as of October 2, 2003, CLEC shall be permitted to use unbundled Network Elements to provide any telecommunications service. As of October 2, 2003, BELLSOUTH shall permit CLEC (a) to Commingle a Network Element or Combination, including but not limited to Declassified Network Elements at least during the applicable Transition Period, with wholesale services obtained from BELLSOUTH, and (b) to convert one or more wholesale services to a Network Element or Combination. BELLSOUTH shall, upon request of CLEC, perform the functions necessary to Commingle a Network Element or Combination with one or more facilities or services or inputs that CLEC has obtained as wholesale services from BELLSOUTH. BELLSOUTH shall not impose any policy or practice related to Commingling that imposes an unreasonable or undue prejudice or disadvantage upon CLEC, and in no event shall BELLSOUTH impose any policy or practice relating to commingling that is inconsistent with the Amended Agreement. Subject to the provisions herein, the rates, terms and conditions of the applicable access tariff will apply to wholesale services, and the rates, terms and conditions of this Amended Agreement or the BELLSOUTH UNE tariff, as applicable, will apply to Network Elements or Combinations, including but not limited to the Declassified Network Elements. "Ratcheting," as that term is defined by the FCC, shall not be required. In addition, BELLSOUTH shall cooperate fully with CLEC to ensure that operational policies and procedures implemented to effect Commingled arrangements shall be handled in such a manner as to not operationally or practically impair or impede CLEC's ability to implement new Commingled arrangements and convert existing arrangements to Commingled arrangements in a timely and efficient manner and in a manner that does not affect service quality, availability, or performance from the end user's perspective. BELLSOUTH shall not change or interpret its wholesale and access tariffs in any fashion that impacts the availability or provision of Commingling under this Amended Agreement, unless BELLSOUTH and CLEC have amended the Agreement in advance to address BELLSOUTH's proposed tariff changes.

3 3 1 1 There will be no charges for conversion from wholesale to Network Elements or UNE combinations, unless the Commission has approved a specific charge for that purpose

3 3 1 2 Any substitution of Network Elements for wholesale services shall be subject to all of the requirements of the Agreement applicable to the purchase of Network Elements and Combinations, and shall include without limitation the following

(a) When a wholesale service employed by CLEC is replaced with Network Elements, BELLSOUTH shall not physically disconnect, separate, alter or change in any other fashion equipment and facilities employed to provide the wholesale service, except at the request of CLEC

(b) BELLSOUTH shall process expeditiously all conversions requested by CLEC without adversely affecting the service quality perceived by CLEC's end user customer

(c) Until such time as BELLSOUTH implements its ASR-driven conversion process, conversion of access circuits to unbundled Network Elements will be performed manually pursuant to BELLSOUTH's conversion guidelines. CLEC may request conversions of any existing service or group of services to Network Elements by submitting a written or electronic request. Except where CLEC specifically requests that BELLSOUTH physically disconnect, separate, alter or change the equipment and facilities employed to provide the wholesale service being replaced, the conversion order shall be deemed to have been completed effective upon receipt by BELLSOUTH of the written or electronic request from CLEC, and recurring charges for Network Elements set forth in the Agreement shall apply as of that date. Neither Party waives any right to argue its respective position as to whether, for requests pending at the time of the TRO or TRRO, retroactive adjustments between the applicable Network Element charges and the previously applicable charges apply, and what the appropriate effective date of such conversions shall be. In any event, however, BellSouth shall process all pending and new conversions in accordance with this Amendment, with each party reserving its right, if any, to retroactive true-up of the conversion and/or circuit rates. The Network Element charges for all conversion requests shall be reflected in the first billing cycle following the effective date of the conversion. If that bill does not reflect the appropriate charges, CLEC is nevertheless obligated to pay no more than the applicable Network Element rate.

(d) All ASR-driven conversion requests will result in a change in circuit identification (circuit ID) from access to UNE or UNE to access

3 4 Routine Network Modifications

3 4 1 General Conditions Routine Network Modifications are those prospective or reactive activities that BELLSOUTH regularly undertakes when establishing or maintaining network connectivity for its own retail customers. Determination of

whether a modification is "routine" shall be based on the tasks associated with the modification, not on the end-user service that the modification is intended to enable. In accordance with 47 U.S.C. § 251(c)(3), 47 C.F.R. Part 51 or other Applicable Law, as of October 2, 2003, BELLSOUTH shall make such Routine Network Modifications in a nondiscriminatory fashion as are necessary to permit access by CLEC to the Loop (including Dark Fiber Loops as permitted), Dedicated Transport, and Dark Fiber Transport facilities available under the Amended Agreement, including DS1 Loops and DS1 Dedicated Transport, and DS3 Loops and DS3 Dedicated Transport. Where facilities are unavailable, Routine Network Modifications do not include trenching, the pulling of cable, the construction of new Loops or Transport or the installation of new aerial or buried cable to provision an order of CLEC. BELLSOUTH shall perform Routine Network Modifications without regard to whether the facility being accessed was constructed on behalf, or in accordance with the specifications, of any carrier. Routine Network Modifications applicable to Loops or Transport may include, but are not limited to, rearranging or splicing of in-place cable, adding an equipment case, adding a doubler or repeater, line conditioning, adding a smart jack, installing a repeater shelf, adding a line card, deploying a new multiplexer or reconfiguring an existing multiplexer, accessing manholes, attaching electronic and other equipment that BELLSOUTH ordinarily attaches to a DS1 Loop to activate such Loop for its own customer, and deploying bucket trucks to reach aerial cable. Routine Network Modifications applicable to Dark Fiber Transport may include, but are not limited to, splicing of in-place dark fiber, accessing manholes, deploying bucket trucks to reach aerial cable, installing equipment casings, and routine activities, if any, needed to enable CLEC to light a Dark Fiber Transport facility that it has obtained from BELLSOUTH under the Amended Agreement. The costs for these Routine Network Modifications are already included in the existing rates for the unbundled Network Elements as set forth in the Agreement. Accordingly, BELLSOUTH may not impose any additional charge on CLEC for undertaking Routine Network Modifications.

- 3.4.2. Performance. BELLSOUTH's performance in connection with the provisioning of unbundled Network Elements for which Routine Network Modifications are necessary remains subject to standard provisioning intervals, and to performance measures and remedies, if any, contained in the Amended Agreement or under Applicable Law. Routine Network Modifications must be completed by BELLSOUTH within the same timeframe applicable to similar network modifications made by BELLSOUTH to provide comparable functionality to its own retail customer.